

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

ALONZO AUSTIN, EXECUTOR,)
Plaintiff(s),)
)
)
v.)
)
MODERN WOODMAN OF)
AMERICA; et al.,)
)
Defendant)

Case No.: 3:07-cv-00138-MHT-WC

ALABAMA TREASURER'S RESPONSE
TO PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS

Comes now the Defendant Alabama Treasurer and in response to "Motion for Summary Judgment by Plaintiff(s) in response to Motion to Dismiss by Defendant(s)" submits the following:

1. Plaintiff's Motion for Summary Judgment (doc. no. 72) is not legally, cognitively, logically or appropriately compliant with the Order to Show Cause (doc. no. 53) that required him to show cause why the Treasurer's motion to dismiss (doc. no. 51) should not be granted.
2. Plaintiff's response does not address any averment, argument, defense or legal issue provided in Treasurer's Motion to Dismiss.
3. Plaintiff, in its paragraph numbered 3 (doc. no. 72) demands to be paid interest [on the funds turned over to unclaimed property] for fiscal year 2006 and one half of 2007.
4. Plaintiff is not entitled to receive interest as a matter of law. The Uniform Disposition of Unclaimed Property Act of 2004, Code of Ala. §§ 35-12-70 et seq. provides in § 35-12-83(c)

that “Within 30 days after a claim is allowed, the property or the net proceeds of a sale of the property must be delivered or paid by the Treasurer to the claimant. When property is paid or delivered to the Treasurer under this article, the owner is not entitled to receive interest, thereafter; however, the owner is entitled to receive dividends and other increments accruing thereafter.”

5. The Alabama Supreme Court has held that as general rule, governmental agency is not liable for interest payable as damages for improperly withheld funds unless so stipulated by contract or by statute. State of Ala. Highway Dept. v. Milton Const. Co., Inc., 586 So.2d 872 (Ala. 1991).

6. Plaintiff’s remedy is to file a claim to recover the unclaimed property that has been shown to be in his name and that he acknowledges is in his name.

Respectfully submitted,

/s/ J. Michael Manasco

John Michael Manasco (ASB 0692-O58J)

Attorney for Defendant, Alabama Treasurer

CERTIFICATE OF SERVICE

I hereby certify that I have filed the foregoing Alabama Treasurer’s Response to Plaintiff’s Opposition to Motion to Dismiss upon the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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I further certify that I have served a copy of the foregoing by depositing a copy of same in the United States mail, postage prepaid and properly addressed to the following

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Signed on this the 24th day of April, 2007

/s/ J. Michael Manasco
John Michael Manasco